

### Remarks

Claims 1-20 are pending in the application, and all stand rejected. Favorable reconsideration is respectfully requested.

Claims 7, 13 and 19 were objected to for a typographical error therein. Withdrawal of the objection is respectfully requested in view of the amendments set forth above.

Claims 1-20 were rejected under 35 USC 102(e) as anticipated by Vayrynen et al. (Vayrynen) (U.S. Patent No. 5,606,548).

To anticipate a claim under § 102, a single prior art reference must identically disclose each and every claim element. See Lindeman Maschinenfabrik v. American Hoist and Derrick, 730 F.2d 1452, 1458 (Fed. Cir. 1984). If any claimed element is absent from a prior art reference, it cannot anticipate the claim. See Rowe v. Dror, 112 F.3d 473, 478 (Fed. Cir. 1997). In view of the foregoing authority, the Applicant respectfully submits that the cited reference fails to anticipate the claimed invention.

Embodiments of the present invention relate to a method for wireless communication for non-latency dependent data. As set forth in independent claim 1, the method includes receiving data for transmission to a base station, and determining whether the data is appropriate for transmission over a digital control channel. The method further includes, if the data is not appropriate for transmission over a digital channel, transmitting the data over a traffic channel.

Independent claim 3 recites a method including receiving data for transmission to a base station, and determining whether the data is appropriate for transmission over a digital control channel. Claim 3 further recites the operation of, if the data is appropriate for transmission over a digital control channel, determining whether network conditions are favorable for transmission over a digital control channel, and, if network conditions are favorable, transmitting the data over a digital control channel to the base station.

Independent claim 9 is an apparatus claim that includes the recitations of claim 3. Independent claim 15 is a claim to a medium storing processor-executable instructions, that also includes the recitations of claim 3.

Independent claim 7 recites a method including receiving data for transmission to a base station, and determining whether the data is appropriate for transmission over a digital control channel. Claim 7 further recites the operation of, if the data is appropriate for transmission over a digital control channel, queuing the received data for transmission. Claim 7 further recites monitoring network conditions for conditions favorable for transmission, and transmitting the data over a digital control channel when network conditions are favorable for transmission.

Independent claim 13 is an apparatus claim that includes the recitations of claim 7. Independent claim 19 is a claim to a medium storing processor-executable instructions, that also includes the recitations of claim 7.

In view of the above, each of the independent claims includes features not disclosed in Vayrynen, and consequently the asserted anticipation rejection cannot be sustained. For example, Vayrynen fails to anticipate the claimed invention for at least the reason that Vayrynen does not disclose receiving data for transmission to a base station, and determining whether the data is appropriate for transmission over a digital control channel, as recited in each of the independent claims.

Rather, Vayrynen relates to a method that purports to enable a mobile communication device that operates within a cellular network to acquire a desired digital control channel with greater certainty (see, e.g., Vayrynen, col. 1, lines 58-67 to col. 2, lines 1-8 and 40-43). To this end, the method according to Vayrynen involves a number of steps to test fields in a received TDM data slot to determine, for example, whether the mobile communication device is tuned to a DCCH (Digital Control Channel) or a DTC (Digital Traffic Channel) (see, e.g., Vayrynen, col. 4, lines 25-44). Other bits and fields are analyzed and error-checked to attempt to ultimately tune the mobile device to a desired DCCH.

However, Vayrynen is completely silent as to receiving data for transmission to a base station, and determining whether the data is appropriate for transmission over a digital control channel, as required by each of the independent claims of the present application. The absence of such disclosure in Vayrynen is consistent with its stated objective of improved *acquisition* of a DCCH; what may happen after the DCCH is acquired is not mentioned in Vayrynen.

By contrast, embodiments of the present invention as claimed relate to operations which may involve a digital control channel, but are not concerned with acquisition of the digital control channel in the first place. For example, determining whether received data is appropriate for transmission of a digital control channel, as recited in each of the independent claims, may involve such considerations as the size of the data to be transmitted and how much the data depends on a connection's latency (see, e.g., the present specification at page 4, lines 13-15). Such considerations are never mentioned in Vayrynen since Vayrynen is only concerned with acquiring, not using, a DCCH.


Accordingly, the independent claims are allowable over Vayrynen. Moreover, since the dependent claims incorporate the features of the independent claims, the dependent claims are likewise allowable over Vayrynen for at least the reasons discussed in connection with the independent claims. Withdrawal of the rejection of claims 1-20 as anticipated by Vayrynen is therefore respectfully requested.

In light of the above discussion, Applicant respectfully submits that the present application is in all aspects in allowable condition, and earnestly solicits favorable reconsideration and early issuance of a Notice of Allowance.

The Examiner is invited to contact the undersigned at (202) 220-4323 to discuss any matter concerning this application. The Office is authorized to charge any fees under 37 C.F.R. 1.16 or 1.17 related to this communication to Deposit Account No. 11-0600.

Respectfully submitted,

Dated: 6/18/02

By:   
William E. Curry  
Reg. No. 43,572

KENYON & KENYON  
1500 K Street, N.W., Suite 700  
Washington, D.C. 20005  
Tel: (202) 220-4200  
Fax: (202) 220-4201

**VERSION OF AMENDMENTS MARKED UP TO SHOW CHANGES MADE**

**In the claims:**

7. (Amended) A method for wireless communication for non-latency-dependent data, the method comprising:
- (a) receiving data for transmission to a base station;
  - (b) determining whether the data is appropriate for transmission over a digital control channel;
  - (c) if the data is appropriate for transmission over a digital control channel, queuing the received data for transmission;
  - (c) monitoring network conditions for conditions favorable for transmission; and
  - (e) transmitting the data over a digital [central] control channel when network conditions are favorable for transmission.
13. (Amended) An apparatus for wireless communication for non-latency-dependent data, the apparatus comprising:
- (a) a processor; and
  - (b) a memory coupled to said processor, said memory storing instructions adapted to be executed on said processor, said instructions including:
    - (i) receiving data for transmission to a base station;
    - (ii) determining whether the data is appropriate for transmission over a digital control channel;
    - (iii) if the data is appropriate for transmission over a digital control channel, queuing the received data for transmission;
    - (iv) monitoring network conditions for conditions favorable for transmission; and
    - (v) transmitting the data over a digital [central] control channel when network conditions are favorable for transmission.

19. (Amended) A medium for wireless communication for non-latency-dependent data, the medium storing instructions adapted to be executed a processor, the instructions comprising:
- (a) receiving data for transmission to a base station;
  - (b) determining whether the data is appropriate for transmission over a digital control channel;
  - (c) if the data is appropriate for transmission over a digital control channel, queuing the received data for transmission;
  - (c) monitoring network conditions for conditions favorable for transmission; and
  - (d) transmitting the data over a digital [central] control channel when network conditions are favorable for transmission.